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Viewing cable 06BOGOTA7262, AMBASSADOR COMMENTS ON DRAFT OF GOC,S JUSTICE AND

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Reference ID	Created	Released	Classification	Origin
06BOGOTA7262	2006-08-10 13:59	2011-08-30 01:44	CONFIDENTIAL	Embassy Bogota

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C O N F I D E N T I A L BOGOTA 007262

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SUBJECT: AMBASSADOR COMMENTS ON DRAFT OF GOC,S JUSTICE AND
PEACE LAW IMPLEMENTING DECREE

REF: BOGOTA 6549

Classified By: Ambassador William B. Wood.

Reasons: 1.4 (b) and (d)

SUMMARY

11. (C) The Ambassador reviewed U.S. concerns regarding the GOC's draft implementing regulations clarifying key elements of the Constitutional Court's July 13 ruling on the Justice and Peace Law with Presidency's Judicial Secretary Mauricio Gonzalez on August 3. The Ambassador stressed the importance of full disclosure, the need for paramilitary leaders to serve real time in jail and that the Law must not impede extradition. Gonzalez, who is charged with reviewing the implementing decree, took careful note of the Ambassador's suggestions. End summary.

GOC NEEDS TO RESOLVE LAW 975 AMBIGUITIES

12. (C) The Ambassador met on August 3 with Mauricio Gonzalez to review U.S. concerns regarding the implementing regulations that the GOC is preparing to clarify the Constitutional Court's recent decision on the Justice and Peace Law (Law 975) (see reftel). The Ambassador noted that the Constitutional Court decision was ambiguous on key issues, and urged the GOC not to resolve these issues in a way that seemed to go beyond what the Court intended. Such an approach could spark another round of national and international criticism, such as that received during its approval in Congress last year.

13. (C) The Ambassador said the U.S. wanted to continue to support the GOC's peace process with paramilitaries as long the GOC held the paramilitaries to Law 975's requirements on truth, justice, and reparation. With respect to truth, he told Gonzalez that the U.S. strongly supported the provision that calls for loss of Law 975 benefits if an individual failed to fully disclose any of the crimes that he had committed.

14. (C) Gonzalez said the GOC needed to specify which type of crimes had to be disclosed to protect demobilized individuals from malicious accusations that could lead to their loss of Law 975 benefits. The Ambassador argued that only requiring the demobilized to disclose specific types of crimes could prompt some demobilized to conceal their involvement in other, serious offenses. He suggested that a demobilized individual should lose his benefits if he intentionally or unintentionally did not disclose any crime that carried a minimum sentence of a year and in which that individual was a participant or an intellectual author. He said that since no demobilized would lose his or her benefits unless later convicted of a crime subject to disclosure, the demobilized were already protected from spurious accusations.

15. (C) On justice, the Ambassador told Gonzalez that the Law called for incarceration under conditions of "security and austerity" that corresponded to normal confinement. The draft decree suggests, however, that after a person serves one third of his sentence, he could be transferred from a jail cell to a farm or "agricultural colony." The Ambassador argued that the 18-month credit for the time in Santa Fe de Ralito or other concentration zones should not be counted as part of that third because that would allow many to serve little or no time in a regular jail and to instead go straight to a farm. (Note: The Court struck down Article 32 that allowed credit for time in Santa Fe the Ralito, but,

because the decision is not retroactive, those that demobilized on the basis of the 18-month credit would still receive it.) He said given the Law's conditions of "security and austerity," additional regulations on "agricultural colonies" were not needed at this time.

¶16. (C) On reparation, the Ambassador said beneficiaries must relinquish their illicit assets before they qualified for benefits. He added that once a judge assessed a demobilized individual's reparations bill, if the value of the reparations was greater than the value of the illicit assets already turned over, the individual should be required to turn over his licit assets to cover the shortfall. The draft decree suggests that providing legal assets was not a requisite for complying with Law 975. (Note: The Court declared that those subject to the Law would be required to use all illicit and licit assets to compensate their victims, rather than only illicit assets as stated in the Law approved by Congress.)

¶17. (C) The Ambassador said the U.S. will continue to insist that the Law must not impede extradition. He asked how the GOC planned to interpret the Court ruling that Article 71, which sought to make "sedition" a political crime, was unconstitutional because of procedural errors. The Ambassador voiced concern that if the GOC revived this Article, former paramilitary leaders could argue that they could not be extradited because their crime of narcotrafficking was "political" in nature. Gonzalez responded that others who have committed political crimes, such as FARC commander Simon Trinidad, have been extradited for non-political crimes such as narcotrafficking. Gonzalez said the GOC understands that the Law must not preclude extradition.

WHY THE NEED FOR AN IMPLEMENTING DECREE?

¶18. (C) The GOC is working on a new implementing decree to clarify how it plans to apply the Court's July 13 decision. It appears that Interior and Justice Minister Sabas Pretelt will remain in office until the implementing regulations are finalized. A debate continues on whether the Constitutional Court's ruling applies retroactively. The Court's decision stated that it did not apply retroactively and the GOC takes the position that those who demobilized on the basis of the Justice and Peace Law approved by Congress in July 2005 are not subject to the Court's ruling announced on July 13. Moreover, the Colombian legal principle of favorability, which is found in Article 29 of the Constitution, says that an individual has the fundamental right to request the more favorable law to be applied to them; therefore, those demobilized who submit themselves to the Justice and Peace Law may insist the GOC apply the terms of Law 975 as approved by the Congress and not the Court.

WOOD